



Public Service Commission of Wisconsin **ORIGINAL FILE**

4802 Sheboygan Avenue
P. O. Box 7854
Madison, Wisconsin 53707-7854

Cheryl L. Parrino, Chairman
John T. Coughlin, Commissioner
Scott A. Neitzel, Commissioner

November 6, 1992

Ms. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

NOV 09 1992

MAILED

RECEIVED

NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Amendment of the Commission's Rules to Establish New
Personal Communications Services

GEN Docket No. 90-314
ET Docket No. 92-100, et al.

COMMENTS OF PUBLIC SERVICE COMMISSION OF WISCONSIN

Dear Ms. Searcy:

Enclosed for filing are an original and 11 copies of the comments of the Public Service Commission of Wisconsin in the above-captioned proceedings. Pursuant to Paragraph 169 of the Notice, five extra copies are included for distribution to all commissioners. The Public Service Commission of Wisconsin should be entered as a participant in both of the named dockets. The contact for the Public Service Commission of Wisconsin is set forth on the last page of the Comments preceding the appendix.

The Commission also respectfully requests that it be sent a copy of the official service list(s) when available. If separate arrangements must be made, please advise the undersigned. My address is set forth above, or I may be contacted at (608) 267-3591, or via facsimile at (608) 267-1202.

Your cooperation in this matter will be greatly appreciated.

Sincerely,

Michael S. Varda

Michael S. Varda
Legal Counsel
Telecommunications Division

cc: Cheryl L. Parrino
John T. Coughlin
Scott A. Neitzel
Jackie K. Reynolds
Telecommunications Division
Core Management Team

0+12

NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV 09 1992

In the Matter of

Amendment of the Commission's Rules) GEN Docket No. 90-314
to Establish New Personal) ET Docket No. 92-100,
Communications Services) et. al.

Comments of Public Service Commission of Wisconsin in Response
to Notice of Proposed Rule Making and Tentative Decision

The Public Service Commission of Wisconsin (PSCW)
respectfully submits these comments to the Federal Communications
Commission (FCC) in response to the Notice of Proposed Rule
Making and Tentative Decision ("Notice") in the above-captioned
proceeding, released August 14, 1992.

COMMENTS

I. INTRODUCTION

A. Identification of Commenter:

The PSCW is charged with the regulation of Wisconsin
intrastate telecommunications services in Chs. 184 and 196, Wis.
Stats. The PSCW has jurisdiction over 95 local telephone
companies, ranging in size from large utility holding company
affiliates such as Wisconsin Bell, Inc., to mid- and small-sized
investor and cooperative telephone companies as small as Bergen
Telephone Company (175 access lines). The PSCW also has
jurisdiction over radio common carriers and cellular service
providers operating within the State of Wisconsin, although
regulation of both services has been greatly reduced by a

combination of statutory and administrative initiatives over the past seven years. Notwithstanding the relaxed regulatory requirements, the PSCW retains by statute a reserved power to assert jurisdiction over such services should industry and/or consumer circumstances warrant re-institution of some regulatory oversight.

B. Summary of PSCW Comments:

The PSCW generally favors the broad outlines of the FCC's initiative with respect to new personal communications services (PCS services¹). Technology is rapidly advancing the quality and diversity of equipment, network configurations and service offerings available to satisfy customer communication needs expeditiously, efficiently and in a cost-effective manner.

The PSCW tentatively agrees with the FCC's initial conclusion that PCS should be subject to minimal regulation (Notice, Para. 94). The PSCW, however, must disagree with some of the FCC's conclusions respecting its authority and any perceived "need" to preempt state regulation of PCS services, especially those services that would tend to overlay or compete with local telephone exchange services. Indeed, that very segment of PCS services, identified in the Petition of Broadband Communications Corp. (Para. 10), represents a segment of PCS that

¹ The PSCW will use the terminology of the Notice, even though "PCS services" contains a redundancy.

GEN Docket No. 90-314
Comments of PSCW

exceeds the narrow statutory limits of private land mobile service (PLMS) within which the FCC has nearly full rein. The PSCW respectfully submits that PCS services competing with or connected to the local exchange service--they have even received their own name, Wireless Local Exchange Service (WILES)--transcend the statutory definition of PLMS and enter into the realm of common carriage.

Attached hereto as Appendix A is a photocopy of a report in Telecommunications Reports, Feb. 10, 1992, p. 8, ("Alexander Resources Study") that describes WILES as a service different from personal communications service. In this proceeding, however, the FCC has lumped WILES into a very broad definition of PCS. The potential residential consumer uses of PCS services noted by the Alexander Resources Study strongly suggest a large number of users obtaining certain types of PCS services for predominantly intrastate communication purposes.

The PSCW believes that the sub-classes of PCS services have not fully evolved so that the services can be clearly as to those within the reach of the FCC and subject to mandated interconnection and those falling in whole or in part within the intrastate telecommunications jurisdiction of the states, §§2(b) and 221(b) of the Communications Act of 1934 ("Act"), 47 USC §152(b) and §221(b). In light of the common carriage versus PLMS problem surrounding PCS services, the PSCW questions the FCC's tentative determination to assert a federally protected right of

interconnection (Para. 99), especially if many PCS services are fundamentally private services not entitled to mandated interconnection that is available only to common carriers under §201(a) of the Act, 47 USC §201(a).

Lastly, the PSCW believes that the FCC's view of service areas is perhaps too limited. Having proposed four types of service areas for which licenses might be awarded, the FCC failed to recognize that perhaps a combination of two types of service areas might better match various PCS services with the types of markets having the potential economies of scale and density of customer demands, whether specialized or general in nature, to encourage investment in new services. The PSCW proposes that the FCC consider granting licenses for both the 194 Local Access and Transport Areas (LATAs) and the 49 "major trading areas" or "regions" which the FCC identified (Para. 60).

II. SPECIFIC DISCUSSION

A. FCC preemption of state jurisdiction is less justified the more a PCS service is common carriage in nature, especially when a PCS service may compete with local telephone exchange network services.

The PSCW is not satisfied with the present all-encompassing definition of PCS (Para. 29):

" . . . [W]e propose that personal communications services be defined as a family of mobile or portable communication services which could provide services to individuals and business and be integrated with a variety of competing networks."

This definition is overly broad and barely works, if at all, to sufficiently identify what kinds of service are covered by the proposed rule making. The FCC itself admits (Para. 90) that PCS is still evolving, and it is likely that a variety of services will be offered which would constitute private land mobile service (as more fully discussed below) or common carrier land mobile service. The FCC also notes that there are many applications of PCS services that could create wholly new services or compete with existing services, all affecting potentially a broad array of industries (Para. 4). Clearly, the FCC has not yet developed a factual record, with specific service descriptions, upon which to make the sweeping conclusion that state regulation of all PCS services must be preempted.

In addition, the FCC has undertaken no examination of §221(b) of the Act, 47 USC §221(b):

"Subject to the provisions of sections 225 and 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation to state commission or by local governmental authority." (Emphasis added.)

The Notice is conspicuous for its lack of discussion of the impact of Broadband Communications' petition for a competitive-

access WILES upon state jurisdiction over intrastate services founded on §221(b) of the Act. Yet the above statute clearly would apply not only to the Broadband proposal but to a potential panoply of PCS services based upon connections to the intrastate "wire" network, that is, the public switched telephone network (PSTN).

In sum, the PSCW believes that the FCC's definition of PCS is too broad and ill-defined to be of much use and also represents a speculative judgment about the various PCS services likely to evolve, some of which may well involve services that are strictly or dominantly intrastate in nature and for which Congress has effectively reserved state jurisdiction under §221(b) of the Act, or §2(b), 47 USC §152(b).

The burden is consequently upon the FCC to demonstrate that state regulation of PCS, which must be reasonably defined, would actually impede or thwart the nationwide provision of all PCS. Louisiana Public Service Commission v. Federal Communications Commission, 476 U.S. 355, 368-369, 90 L. Ed.2d 369, 106 S. Ct. 1890 (1986). Absent such an adequate record, the FCC is not entitled to disturb or preempt jurisdiction over intrastate wire and radio communications explicitly reserved to the states by §2(b) of the Act.

The PSCW urges the FCC to consider how dual federal-state jurisdictions might be harmonized, especially as to those PCS services that the PSCW believes are truly common carrier in

nature, as discussed in the next section, and would likely need a high degree of coordination with existing common carrier facilities, i.e., local exchange networks.

B. To the extent PCS services functionally exceed the narrow statutory definition of "private land mobile service," PCS must be classed as common carriage, especially if significant connection with the public switched telephone network is expected.

The PSCW vigorously disputes the conclusion (Para. 96) that "PCS would, in essence, be indistinguishable from any other private land mobile radio service." This analysis is faulty, and far exceeds the FCC's own description of the array of services contemplated within this proceeding (e.g., Paragraphs 10 and 26). The FCC is proceeding as if in a world apart from the very specific, service-defining limitations in "private mobile land service" at 47 USC §153(gg):

"Private land mobile service means a mobile service which provides a regularly interacting group of base, mobile, portable and associated control in relay stations (whether licensed on an individual, cooperative or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operations." (Emphasis added.)

The language employed in reference to PLMS by the FCC throughout the Notice suggests a practical abolition of the requirements for regular interaction among a group of stations, classes of eligible users and the designation of areas of operations, all of

which are essential to the definition of PLMS. References in the Notice to 60 million potential consumers and a global standard of PLMS hardly suggest PCS will readily slip into the statutory "pigeon hole" for PLMS. Even the term, "private land mobile service," is itself constructed from specifically defined terms in other subsections of §3 of the Act, such as "mobile service," "radio station," and others, 47 USC §153(k)-(n). The very timing of the 1982 enactment that created the definition of private land mobile services at 47 USC §332 suggests that the statute is less a sweeping grant of authority than it is an artifact of pre-divestiture regulation enacted mostly as a housekeeping measure to clarify jurisdictional boundaries among radio services and between radio and wire-based services.

Technology today appears to be rapidly erasing the lines dividing one service from another. The PSCW respectfully submits that the FCC may be creating more trouble for the development of PCS by not classifying specific, defined forms of PCS as common carriage when the proposed services truly deserve such a classification. Many PCS services, based upon the picture drawn by the FCC in the Notice, will easily exceed the statute's categorization of private land mobile service by offering wide geographical--almost global--availability and numerous service features, chief among them interconnection with the local telephone network.

The PSCW urges a more detailed study of individual PCS proposals to properly fit them within the existing statutory framework, a framework that includes principles of both common carrier classification and federal-state dual jurisdiction.

C. Interconnection standards cannot be federally mandated by a preemption declaration based on §332(c)(3), especially if PCS is classified as private land mobile service.

The PSCW urges the FCC to reconsider and clarify if possible its reliance upon 47 USC §201(a) and §332(a)(1) as support for a "federally protected right to interconnection with PSTN" (Para. 99 and Note 74), regardless of the classification of PCS as either private or common carrier service. Classification does indeed make a difference. First, classification of all PCS as private land mobile service will exclude it from the status of common carriage, the status necessary for any mandatory interconnection under §201(a). Second, §332(a) is not authority for mandatory interconnection if PCS is classified as private land mobile service because that section merely addresses the allocation of spectrum for specified private mobile land services, not mandatory interconnection with the PSTN.

Section 332(c)(3) provides that no state or local government shall have authority to impose

" . . . any rate or entry regulation upon any private land mobile service, except that nothing in this subsection shall be construed to impair such jurisdiction with respect to

common carrier stations in the mobile service." (Emphasis added.)

This language on its face does not support interconnection preemption, as it clearly excludes the states only as to rate or entry regulation. The PSCW is unaware of any legislative history that would suggest that Congress, prior to divestiture in 1982, intended to preempt the states from regulating how generally separate private land mobile services might interconnect with the local network, except insofar as requiring that at least some form of interconnection be available.

The PSCW also seeks clarification as to how the FCC interprets the phrase "common carrier station in the mobile service." Is such a station a local exchange company's connection point with a mobile service provider having a PCS license? The PSCW suggests that interconnection rights may be subject to dual jurisdiction, especially when a "private" PCS service is at issue or a PCS service may be designed to handle strictly intrastate or local telephone exchange network-type services. Other types of services may have an interstate function which would warrant regulatory oversight exclusively in the FCC. Again, the PSCW believes that the FCC is premature with respect to preemption of state control of interconnection in view of the inadequate description of the needs of various types of PCS services.

The matter is of vital interest to the PSCW because of the costs of interconnection that many of Wisconsin's small telephone companies might have to incur, possibly for minimal demand. This is not to be construed as PSCW resistance to the development of PCS services; in fact, the PSCW welcomes that development. But the PSCW strongly encourages the FCC to engage in a much more careful classification of the various types of services which may arise and whether or not the particular "market niches" of various PCS services are dominantly intrastate, interstate, or "mixed" in jurisdictional character.

The PSCW would like to foster a cooperative arrangement with the FCC in vital matters of efficient and cost-effective interconnection. To this end, declaration of most PCS services at this time as common carriage, especially those attempting to create combined inter- and intrastate facilities would be the best solution. The states and the FCC have a wealth of experience in dealing with the allocation of state and federal jurisdictions under the uniform system of accounts and the separation processes. That experience should be exploited to the advantage of all concerned through FCC cooperation with the states.

D. The FCC should offer LATA-wide and "major trading area" PCS licenses, thereby facilitating the different service objectives and economics associated with various PCS services.

The PSCW, upon consideration of the FCC's proposal for geographical areas for PCS licensees, believes that the FCC stopped one step short of granting the kind of flexibility it wanted to bestow upon potential PCS licensees. The FCC's desire to foster a diversified array of PCS services is not readily "compressed" into the four geographical categories set forth in the Notice (Para. 60). The PSCW believes that license territories based upon the 487 "basic trading areas" and the entire nation in Options 1 and 4, respectively, suffer as options at the extremes.

The other two options seem reasonable, yet their deficiencies, as observed by the FCC, suggest yet a fifth approach. Option 2, proposing the 47 "major trading areas" and Option 3, proposing the 194 telephone LATAs, if implemented together, might help to foster the very kind of development of PCS the FCC seeks. For example, PCS services having few specialized features and focused upon the "mass market" (See Alexander Resources Study, Appendix A) might be better classified as common carriage. A LATA-wide license for such a PCS service might better assist the economics of the development of such a service through assurance of a market of sufficient size based upon a geographical area with a sufficiently large number of potential customers. Because connection with the PSTN would

likely be a major concern of a mass market PCS licensee, a LATA-wide license would afford a more rational basis for determining PSTN interconnection needs and for containing costs through extensive reliance upon existing PSTN facility arrangements. Coordination with state authorities would be simplified and allow state consumer oversight of a service selling to the general public.

A major trading area PCS licensee, in contrast, may be much more likely to offer a private land mobile service marketed to all users with specialized or "niche" needs in a very large area. A major trading area, broken into various classes of specialized services, suggests ready classification of "eligible users." Aggregation of demand for specialized services might be more feasible in large trading area territories than in a LATA. Such specialized services might be more readily classified as PLMS covering several states or parts of states, and needing uniformity through regulation by the FCC only.²

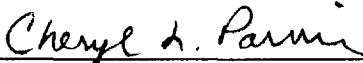
² These suggested distinctions between trading areas and LATA-wide licensees may also offer the FCC guidance with respect to whether or not one type of license should require a bidding process for grant and another might be better suited to a lottery process. For example, where mass market penetration in a LATA may take years, perhaps a lottery process is best for a low threshold entry cost to potential entrants. Where specialized needs or a large, urbanized LATA suggest a rich market, a bidding process for such a private land mobile service PCS license might be more appropriate.

III. CONCLUSION

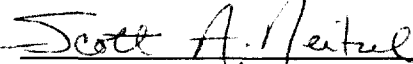
The Public Service Commission of Wisconsin respectfully submits that the FCC's Notice in this case is at present insufficient for a) determining the likely types of PCS services, b) justifying preemption of all state regulation of intrastate PCS services and c) classifying all PCS as private mobile land service when some clearly will provide common carrier type services. Neither the facts nor legal argument in the Notice fully support the tentative conclusions of the FCC with respect to these issues. Moreover, and as a direct result of the foregoing, the FCC's assertion of a federally protected interconnection right is premature, overly broad, and without reasonable reconciliation with the reservations of state jurisdiction in 47 USC §§152(b) and 221(b).

Lastly, the Commission respectfully requests the FCC to consider granting both "major trading area" and LATA-wide licenses, examining in the process how the particular markets may in their respective ways be better suited to different PCS service needs and common carrier and PLMS classifications.

Respectfully submitted this 6th day of November, 1992:


Cheryl L. Parrino, Chairman


John T. Coughlin, Commissioner


Scott A. Neitzel, Commissioner

GEN Docket No. 90-314
Comments of PSCW

For Service List Purposes Use the Following Contact:

Michael S. Varda, Esq.
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

(608) 267-3591
FAX (608) 267-1202

comments:FCC

*****NEW ALEXANDER RESOURCES STUDY CONTRADICTS PREVAILING BELIEFS ABOUT PCS, CELLULAR*****

Alexander Resources, a Scottsdale, Ariz., management and market research consulting firm, has identified a new type of telephone service--Wireless Local Exchange Service (WILES)--that will be distinct from cellular, cordless, and personal communications services and "will replace or augment some or all of the wired local telephone network access lines" connecting residential and business phones to the local exchange. Defined as "a variety of new basic and enhanced" local exchange services, WILES will "create significant new opportunities and threats" for local exchange, cellular, cable TV, specialized mobile radio, interexchange, and PCS providers, the firm said.

These observations were based on the firm's 350-page study--"Wireless Local Exchange Service: Opportunities, Competition, and Strategies"--which surveyed 1092 households and 747 businesses nationwide. "To avoid errors typically found in traditional telephone surveys which ask questions about intended use of future products and services, this survey did not try to gauge use of any particular product or service. Rather, it concentrated on uncovering life style/behavioral predispositions, motivator, and communications needs that would create a valid requirement and willingness to pay for a new wireless telephone service," Alexander Resources said.

The survey's findings contradict many commonly held beliefs concerning cellular, cordless, and PCS offerings. For example, the study determined that (1) business wireless needs would be served best by wireless in-building systems, cellular, and WILES, rather than PCS; (2) residential wireless needs would be served best by WILES, coupled with existing service, rather than cellular, cordless, or PCS offerings; and (3) residential customers attach three times more importance to emergency and safety use of wireless communications than they do to away-from-home communications.

The survey noted that for businesses, "WILES may either substitute for, or back up, some or all of the wired local telephone network access lines which connect a business' telephone system to the public switched telephone network (PSTN)." For residences, WILES primarily will provide wireless access for the residential subscriber to the PSTN and other WILES subscribers," it said.

Regarding existing local exchange service, the study found that (1) 61% of all residences and 71% of all businesses have valid communications needs that could not be satisfied by existing wired local telephone service; (2) despite a high level of satisfaction with the local telco, 53% of residences and 42% of businesses would select a lower-cost supplier of local telephone services; and (3) 60% of all residences and 62% of all businesses would pay \$10 to \$100 per month for WILES.

For residences, "WILES would offer the free air time of cordless telephones, combined with the coverage of cellular telephones, by replacing the traditional residential local telephone line with a radio channel. For the business user, WILES would offer new levels of communications reliability and increased flexibility by replacing the traditional business telephone line with a radio channel," the study said.

It estimated that "the total number of WILES residential subscribers and business channels will grow to 15,000,000 by 1999--or 11% of all access lines/subscribers." Revenue from all WILES services is estimated to reach \$7.2 billion by the same time. For further information, contact Alexander Resources at 602/948-8225.

-End-